

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

JODY VENDITTI,

Plaintiff,

vs.

UNUM LIFE INSURANCE COMPANY
OF AMERICA and KINDRED
HEALTHCARE OPERATING INC.
EMPLOYEE MEDICAL AND
WELFARE BENEFITS PLAN,

Defendants.

No. 18-CV-25-LRR

ORDER

The matter before the court is United States Magistrate Judge Mark A. Roberts's Report and Recommendation (docket no. 22). The Report and Recommendation recommends that the court affirm Unum Life Insurance Company of America's ("Unum") decision and enter judgment in favor of Defendants Unum and Kindred Healthcare Operating Inc. Employee Medical and Welfare Benefits Plan (collectively, "Defendants") and against Plaintiff Jody Venditti.

On January 12, 2018, Venditti filed a Petition at Law and Jury Demand (docket no. 3) in the Iowa District Court for Linn County. On February 20, 2018, Defendants filed a Notice of Removal (docket no. 1), bringing the case before the court. On March 1, 2018, Defendants filed an Answer (docket no. 5). The matter was briefed and, on September 24, 2018, was referred to Judge Roberts for issuance of a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). *See* Plaintiff's Brief (docket no. 18); Defendants' Brief (docket no. 19); Plaintiff's Reply (docket no. 20). On December 13, 2018, Judge Roberts issued the Report and Recommendation. In the Report and Recommendation, Judge Roberts advised the parties that they "must file objections to th[e]

Report and Recommendation within fourteen (14) days.” Report and Recommendation at 23. On December 19, 2018, Venditti filed a Motion for Extension of Time to File Objections to Report and Recommendation (“Motion for Extension of Time”) (docket no. 23). On December 20, 2018, the court entered an Order (docket no. 24) granting Venditti’s Motion for Extension of Time, requiring Venditti to file any objections to the Report and Recommendation by January 7, 2019. *See* December 20, 2018 Order at 1. Neither party has filed objections to the Report and Recommendation, and the time for doing so has passed.

Pursuant to statute, the court applies the following standard of review to the report and recommendation of a magistrate judge:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for de novo review of a magistrate judge’s report and recommendation on dispositive motions when objections are made. Fed. R. Civ. P. 72(b)(3). The Eighth Circuit Court of Appeals has held that it is reversible error for a district court to fail to conduct a de novo review of a magistrate judge’s report and recommendation when such review is required. *See United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003) (providing that “failure to engage in the required de novo review is reversible error”).


The statute governing review provides only for de novo review of “those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). The court reviews the unobjected-to portions of the proposed findings or recommendation for “plain error.” *See United States v. Rodriguez*, 484 F.3d 1006, 1010-11 (8th Cir. 2007) (noting that, where a party does not file objections to a magistrate’s report and recommendation, the party waives the right to de novo review

and the court will review the decision for plain error).

In this case, no objections have been filed, and it appears to the court upon review of Judge Roberts's findings and conclusions that there is no ground to reject or modify them. Therefore, the court **ACCEPTS** Judge Roberts's Report and Recommendation of December 13, 2018. Accordingly, the Report and Recommendation (docket no. 22) is **ADOPTED** and Unum's decision is **AFFIRMED**. The Clerk of Court is **DIRECTED** to enter Judgment in favor of Defendants and close this case.

IT IS SO ORDERED.

DATED this 17th day of January, 2019.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA